PA 11-108 — sHB 6274
Judiciary Committee

AN ACT CONCERNING AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS

SUMMARY: This act makes changes in Article 9 of the Uniform Commercial Code (UCC). Article 9 deals with a creditor's contractual lien interest in a debtor's personal property that secures payment or other performance by the debtor, as well as sales of accounts, chattel paper, payment intangibles, promissory notes, and similar transactions. Among other things, Article 9 sets out requirements for (1) the creditor's interest (a "security interest") to attach to the debtor's property and become enforceable and (2) perfecting a security interest which allows the secured party's interest to have priority over other parties, such as a creditor who gets a judicial lien, bankruptcy trustee, and others who later take a security interest in the collateral. Depending on the type of collateral, a security interest is perfected (1) when a secured party files a financing statement in the appropriate office, (2) when a secured party takes possession or control of the collateral, or (3) automatically on attachment for certain specified collateral items.

The act:

1. changes definitions and adds a definition of "public organic record," which it uses in relation to organizations;
2. expands the types of systems that a secured party can use to have control of electronic chattel paper and, thus, perfect a security interest in it;
3. for a debtor that moves to another jurisdiction, clarifies and makes more uniform the rules that (a) perfect a security interest in property acquired after the move, if the financing statement would have perfected such an interest had the debtor not moved and (b) requires the secured party to continue perfection by filing in the new jurisdiction within four months;
4. for a new debtor in another jurisdiction who becomes bound by an original debtor's security agreement (such as through a merger), (a) reduces, from one year to four months, the time that a security interest perfected against the original debtor remains perfected against the new debtor without filing in the new jurisdiction and (b) continues perfection of a security interest for four months in collateral owned by the new debtor before becoming bound as the new debtor and after-acquired collateral if the financing statement would have done so for collateral acquired by the original debtor;
5. changes how a debtor's name is recorded on a financing statement, including specifying what is recorded for an individual's name;
6. changes the name of a "correction statement" that a debtor can file claiming that a financing statement against him or her was unauthorized to an "information statement" and also allows secured parties to file these

statements when they believe a record was filed by someone not entitled to do so;
7. sets transition rules to allow secured parties to continue the enforceability of their security interests when the act's changes take effect; and
8. makes minor and technical changes.

Except as described below, the act applies to transactions and liens that fall within its scope, even if created or entered into before July 1, 2013. The act does not affect an action, case, or proceeding that began before July 1, 2013.
EFFECTIVE DATE: July 1, 2013

§ 1 — DEFINITIONS

Authenticate

Prior law defined "authenticate" as (1) signing or (2) executing or adopting a symbol or encrypting or processing a record with intent to identify the person and adopt or accept a record. Instead of the second part of the definition, the act requires attaching or logically associating an electronic sound, symbol, or process with a record intending to adopt or accept it.

Certificate of Title

The act allows a certificate of title to be in a record, if the record is maintained as an alternative to a certificate of title by the issuing government unit when a statute permits indicating the security interest on the record. By law, a record is information inscribed on a tangible medium or stored in an electronic or other medium that can be retrieved in a perceivable form.

Organizations and Public Organic Records

Under prior law, a "registered organization" was one organized solely under state or federal law for which the state or federal government maintained a public record. The act instead defines it as an organization formed or organized under state or federal law by (1) filing a public organic record with a state or the federal government, (2) a state or the federal government issuing a public organic record, or (3) state or federal legislation. The act specifies that this includes a business trust formed or organized under a state law requiring that organic records be filed with the state.

The act defines a "public organic record" as a record available for public inspection that is:

1. initially filed with or issued by a state or the federal government to form or organize an organization and any filed or issued record that amends or restates it or
2. a business trust's organic record initially filed with a state and any filed record that amends or restates it, if a state statute on business trusts requires filing.

It also includes state or federal legislation to form or organize an organization, records amending the legislation, and records filed with or issued by a state or the United States to amend or restate the organization's name.

§ 2 — ELECTRONIC CHATTEL PAPER

Chattel paper is a writing with a monetary obligation and security interest in specific goods or a lease of them (such as when a customer buys goods and signs a note that gives the dealer an interest in the goods to secure payment of the purchase price).

A security interest in electronic chattel paper can be perfected by control. In addition to a system that meets the requirements for control in existing law, the act allows a secured party to establish control if a system is employed for evidencing the transfer of interests in the chattel paper that reliably establishes the secured party as the person to whom the chattel paper was assigned.

One of the six specifications to establish control under prior law was that copies or changes that add or change an identified assignee of the electronic chattel paper's authoritative copy can only be made with the secured party's participation. The act instead requires the secured party's consent.

§ 3 — DEBTOR'S LOCATION

By law, a registered organization organized under federal law or a bank branch or agency not organized under state or federal law can designate its state of location if federal law allows it to do so. The act specifies that this applies if the federal law allows designating a main, home, or comparable office.

§§ 5 & 7 — COLLATERAL ACQUIRED BY A RELOCATED DEBTOR OR A NEW DEBTOR

Debtor Relocation

By law, a perfected security interest in collateral remains perfected for four months after a debtor relocates to another jurisdiction and a secured party can continue perfection by filing in the new jurisdiction within the four-month period. Previously, a creditor also had a security interest in collateral acquired after the debtor relocated if the financing statement provided for it, but the security interest was not perfected. The act:

1. perfects for four months a security interest in after-acquired collateral that would have been covered by the statement if not for the relocation and
2. requires the secured party to perfect the security interest in the new jurisdiction before the four-month period expires and before the financing statement from the old jurisdiction becomes ineffective in order for the security interests to remain perfected.

New Debtor in Another Jurisdiction

By law, a new debtor in another jurisdiction can become bound by an original debtor's security agreement (such as through a merger). Under prior law, a security interest in the original debtor's collateral remained perfected against the new debtor for one year and the secured party could file to continue perfection in the new jurisdiction.

The act reduces, from one year to four months, the period that perfection continues without filing. But it also perfects a security interest for four months in collateral owned by the new debtor before becoming bound as the new debtor and after-acquired collateral. Under the act, this security interest is perfected if the financing statement (1) names the original debtor, (2) is filed under the law of the appropriate jurisdiction, and (3) would have perfected a security interest in the collateral if it were acquired by the original debtor. Under the act,

1. for the security interests to remain perfected, the secured party must perfect the security interest before the four-month period expires and before the financing statement from the old jurisdiction becomes ineffective;
2. if the secured party does not act to retain perfection, the security interest becomes unperfected and is deemed to have never been perfected as against a purchaser of the collateral for value; and
3. the perfected security interest in the new debtor's collateral under these provisions is subordinate to a security interest in the same collateral that is perfected by other means.

§ 6 — COLLATERAL NOT SUSCEPTIBLE TO POSSESSION

Under existing law, a buyer (who is not a secured party) of (1) accounts, (2) electronic chattel paper, (3) electronic documents, (4) general intangibles, or (5) investment property other than a certificated security, takes free of a security interest if he or she gives value without knowledge of the security interest and before it is perfected. The act expands this provision to cover any collateral except tangible chattel paper, tangible documents, goods, instruments, or certificated securities. Thus, the rule applies to all types of intangible collateral that are not susceptible to possession.

§§ 8-9 — ASSIGNMENTS

For accounts, chattel paper, payment intangibles, and promissory notes, the law makes a term restricting assignments in an agreement between an account debtor and an assignor or in a promissory note generally ineffective. Under prior law, an exception to this rule was the sale of a payment intangible or promissory note. Under the act, the exception applies to the sale of a payment intangible or promissory note but not when the sale is (1) under a disposition of collateral after default or (2) on acceptance of collateral in full or partial satisfaction of obligation.

Terms restricting the assignment of a general intangible, health care insurance receivable, or promissory note whether in the promissory note or the agreement between an account debtor and debtor are generally ineffective. Under prior law, this restriction applied to a security interest in a payment intangible or promissory note only if the security interest arose out of a sale of the payment intangible or promissory note. Under the act, it applies to a security interest that arises out of a sale other than a sale (1) under a disposition of collateral after default or (2) on acceptance of collateral in full or partial satisfaction of obligation.

§ 10 — IDENTIFYING THE DEBTOR

Under prior law, a financing statement sufficiently provided the name of a debtor that is a registered organization if it provided the name as indicated on the public record of the jurisdiction where the debtor organized. The act instead requires the financing statement to include the registered organization's name stated on the public organic record most recently filed with or issued or enacted by the jurisdiction where the organization is organized which purports to state, amend, or restate the name. The act also applies this rule to a registered organization that holds collateral in trust. The rule is different for collateral otherwise held in trust (see below).

Under prior law, if the debtor was a decedent's estate, the financing statement had to provide the decedent's name and indicate that the debtor was an estate. Instead, under the act, when collateral is administered by a personal representative of a decedent, the financing statement must (1) provide the decedent's name as the debtor's name and (2) indicate in a separate part of the financing statement that the collateral is administered by a personal representative. Under the act, the decedent's name indicated on the order appointing the personal representative issued by a court with jurisdiction over the collateral is sufficient to indicate the decedent's name on the financing statement.

When the debtor was a trust or trustee acting regarding property in trust, prior law required the financing statement to (1) provide the name for the trust in its organic record or, if no name was specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors and (2) indicate in the debtor's name or otherwise that the debtor was a trust or trustee acting for trust property. The act limits this rule to collateral held in a trust that is not a registered organization. It also requires the additional information to distinguish the trust and indicate that the collateral is held in trust be in a separate part of the financing statement. It also specifies that a trust without a name can list the settlor's or testator's name, which it defines as (1) the name indicated in the trust's organic record or (2) when the settlor is a registered organization, the settlor's name on the public organic record most recently filed with or issued or enacted by the jurisdiction of organization that purports to state, amend, or restate the settlor's name.

In other cases where the debtor has a name, prior law required the financing statement to provide the debtor's individual or organizational name. When the debtor is an individual, the act instead requires the financing statement to provide the (1) debtor's individual name, (2) debtor's surname and first name, or (3) name as it appears on his or her unexpired Connecticut driver's license or identity card. If more than one Connecticut driver's license or identity card has been issued to the individual, the most recent one applies.

In other cases where the debtor does not have a name, the law requires the financing statement to include the name of partners, members, associates, or others comprising the debtor. The act specifies that the names be provided in a manner so that each name would be sufficient if the person named was the debtor.

§ 11 — CHANGE IN DEBTOR'S NAME

By law, if a debtor changes his or her name so that a filed financing statement becomes seriously misleading, it is effective to perfect a security interest in collateral acquired by the debtor before and for four months after the change. The act broadens this provision to cover any situation where a name is insufficient to meet the requirements for a proper name for a debtor (as described above in § 10) making the financing statement seriously misleading. The law, unchanged by the act, requires that the financing statement be amended to preserve its effectiveness after the four-month period.

§ 12 — TRANSMITTING UTILITIES

Under prior law, if a financing statement indicated the debtor was a transmitting utility, it was effective until a termination statement was filed. The act limits this rule to initial financing statements that indicate the debtor is a transmitting utility. Thus, if a transmitting utility is not listed as the debtor on the initial statement but included on all others, the other statements are effective for five years after the date they are filed.

§ 13 — REFUSING FILINGS REGARDING ORGANIZATIONS

The act eliminates the filing office's ability to refuse an initial financing statement or amendment that names an organization as a debtor when it was not previously named because the document does not state the type of organization or its jurisdiction. As under existing law, the filing office can reject the filing it if does not provide the debtor's mailing address and indicate whether the debtor's name is an individual's or organization's name.

§§ 14-16 — INFORMATION STATEMENTS

The act renames correction statements as information statements. The law allows a person to file one of these statements about a record indexed under the person's name if he or she believes the record is inaccurate or wrongfully filed.

The act also allows a secured party of record to file an information statement on a financing statement if he or she believes a related record was filed by someone not entitled to do so. The information statement must:

1. identify the record it relates to by the initial financing statement's file number and, if it relates to a record in a town clerk's office, provide the date and time or book and page numbers on which the initial financing statement was filed;
2. indicate it is an information statement; and
3. explain why the person believes the filer was not entitled to file the record.

§ 17 — MORTGAGES

The act makes a change to the affidavit a secured party may record in the office where a mortgage is recorded in order to enable the secured party to enforce a mortgage non-judicially. (Connecticut law does not allow non-judicial enforcement of mortgages.) Prior law required the affidavit to state that a default

has occurred. The act requires the affidavit to state that the default is with respect to an obligation secured by the mortgage.

§§ 18-25 — TRANSITION PROVISIONS

Continuing Perfection of Security Interests (§§ 19-20)

Under the act, a security interest perfected immediately before July 1, 2013 continues to be perfected under the act if on July 1, 2013 the act's requirements for attachment and perfection are met. If a security interest is technically rendered unperfected on July 1, 2013, the security interest remains perfected only if the act's perfection requirements are satisfied by July 1, 2014.

Under the act, a security interest unperfected before July 1, 2013 will become perfected (1) on July 1, 2013, if the act's perfection requirements are met before or on that date or (2) at any date after July 1, 2013, when the act's perfection requirements are met.

Continuing Perfection by Filing (§ 21)

By law, depending on the type of collateral, a security interest is perfected by filing a financing statement in the secretary of the state's or town clerk's office. A financing statement is generally valid for five years and a secured party must file a continuation statement to continue perfection of a security interest.

Under the act, a financing statement filed before July 1, 2013 is effective to perfect a security interest if it satisfies the act's requirements for perfection. A financing statement filed before July 1, 2013 that satisfies the requirements for perfection at that time is no longer effective:

1. if filed in Connecticut, when it would cease to be effective under prior law without the act's provisions (for example, the time for its effectiveness expires) or
2. if filed in another state, (a) when it would cease to be effective under the other state's law or (b) on June 30, 2018 (the act specifically applies the June 30, 2018 deadline to a financing statement filed against a transmitting utility before July 1, 2013 only to the extent that existing law and the act provide that a jurisdiction other than the one where the financing statement is filed governs perfection).

Under the act, filing a continuation statement on or after July 1, 2013 does not continue the effectiveness of a financing statement filed before that date except when it is a continuation statement timely filed according to the law of the jurisdiction governing perfection to continue a financing statement filed in the same office before July 1, 2013. In this case, the financing statement remains effective for the period provided by that jurisdiction's law.

A financing statement filed before July 1, 2013 and a continuation statement filed on or after that date are effective only to the extent they satisfy the act's requirements for an initial financing statement. The act considers a financing statement indicating that the debtor is a decedent's estate as indicating the collateral is administered by a personal representative as required by the act. For a financing statement indicating that the debtor is a trust or trustee acting for

property held in trust, it is considered as indicating that the collateral is held in trust as required by the act.

When Filing an Initial Financing Statement Continues Effectiveness (§ 22)

Under the act, filing an initial financing statement in the appropriate office continues the effectiveness of a financing statement filed before July 1, 2013, if:

1. filing an initial financing statement in that office would be effective to perfect a security interest under the act;
2. the financing statement filed before July 1, 2013 was filed in an office in another state; and
3. the initial financing statement (a) satisfies the act's requirements for an initial financing statement; (b) identifies the pre-July 1, 2013 financing statement by its filing office, filing date, and file numbers, if any, and the most recent continuation statement filed; and (c) indicates the pre-July 1, 2013 financing statement remains effective.

Filing such an initial financing statement continues the effectiveness of the pre-July 1, 2013 financing statement for the same period usually granted to an initial financing statement. The act makes a conforming change regarding debtors who are transmitting utilities.

Changes to Pre-July 1, 2013 Financing Statement (§ 23)

Under the act, after July 1, 2013, a person can only add or delete collateral or continue, terminate, or amend a financing statement filed before that date under the law of the jurisdiction governing perfection. The effectiveness of such a statement may also be terminated under the law of the jurisdiction where it is filed.

If Connecticut law governs perfection, the act allows the information in the pre-July 1, 2013 financing statement to be amended after that date only if:

1. the pre-July 1, 2013 financing statement and amendment are filed in the appropriate office;
2. an amendment is filed in the appropriate office with or after filing an initial financing statement in that office that continues the effectiveness of a pre-July 1, 2013 financing statement (see § 22 above); or
3. an initial financing statement is filed in the appropriate office, provides the amended information, and satisfies the requirements for an initial financing statement that continues the effectiveness of a pre-July 1, 2013 financing statement.

If Connecticut law governs perfection, the effectiveness of a pre-July 1, 2013 financing statement can be continued only according to the act's transition provisions. Regardless of whether Connecticut law governs perfection, a pre-July 1, 2013 financing statement filed in Connecticut can be terminated after July 1, 2013 by filing a termination statement in the office where the financing statement is filed unless an initial financing statement has been filed under the transition provisions (see § 22) to continue the effectiveness of the financing statement.

Who Can File (§ 24)

The act allows someone to file an initial financing statement or continuation statement under the transition provisions if (1) the secured party of record authorizes it and (2) the filing is necessary under the transition provisions to (a) continue the effectiveness of a financing statement filed before July 1, 2013 or (b) perfect or continue perfection.

Priority (§ 25)

The act determines the priority of conflicting claims to collateral, but allows prior law to set priority if the relative priorities of claims were set before July 1, 2013.

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